

**ORDINANCE NO. 12  
SERIES 2000**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, GRANTING A NON-EXCLUSIVE FRANCHISE BY THE CITY OF GUNNISON TO GREELEY GAS COMPANY, ITS SUCCESSORS AND ASSIGNS, GRANTING THE RIGHT TO FURNISH, SELL, AND DISTRIBUTE NATURAL GAS TO THE CITY OF GUNNISON AND TO ALL PERSONS, BUSINESSES, AND INDUSTRIES WITHIN THE CITY OF GUNNISON AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE, AND EXTEND INTO, WITHIN, AND THROUGH THE CITY OF GUNNISON ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL, AND DISTRIBUTE NATURAL GAS WITHIN, INTO, AND THROUGH THE CITY OF GUNNISON, AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AND PUBLIC EASEMENTS AS MAY BE NECESSARY; AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY OF GUNNISON, THE FRANCHISE AGREEMENT WHICH ESTABLISHES THE TERMS AND CONDITIONS OF SAID FRANCHISE.**

**WHEREAS**, pursuant to the affirmative votes of the eligible City of Gunnison municipal electors at a special election held August 29, 2000, the electors of the City of Gunnison have authorized the City Council of the City of Gunnison to grant a non-exclusive franchise for the construction, maintenance, and operation of a natural gas distribution system within the City of Gunnison; and

**WHEREAS**, Greeley Gas Company is the current holder of a franchise for the construction, maintenance, and operation of a natural gas distribution system within the City of Gunnison, which expires on October 14, 2000; and

**WHEREAS**, Greeley Gas Company has applied for a new franchise for the construction, maintenance, and operation of a natural gas distribution system within the City of Gunnison; and

**WHEREAS**, a natural gas franchise agreement has been prepared which is acceptable to both the City of Gunnison and Greeley Gas Company; and

**WHEREAS**, pursuant to public notice, the City Council of the City of Gunnison has conducted a public hearing on the natural gas franchise agreement on October 10, 2000; and

**WHEREAS**, the City Council of the City of Gunnison hereby finds that the public has had adequate notice and opportunity to comment upon the proposed natural gas franchise agreement; and

**WHEREAS**, the City Council hereby finds that it would serve the public interest of the citizens of the City of Gunnison to grant a non-exclusive franchise to Greeley Gas Company for the construction, maintenance, and operation of a natural gas distribution system within the City of Gunnison pursuant to the terms of the natural gas franchise agreement.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:**

Section 1. The City Council of the City of Gunnison, Colorado, hereby grants a non-exclusive franchise for the construction, maintenance, and operation of a natural gas distribution system to Greeley Gas Company pursuant to the terms of the franchise agreement between the City of Gunnison, Colorado, and Greeley Gas Company, with an effective date of October 14, 2000, which agreement is incorporated herein by this reference.

Section 2. The City Council of the City of Gunnison, Colorado, hereby authorizes the Mayor and City Clerk of the City of Gunnison to execute said franchise agreement on behalf of the City of Gunnison.

**INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED** this 26th day of September, 2000, on first reading, and introduced, read, and adopted on second and final reading this\_10th day of October, 2000.

\_\_\_\_\_  
Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
City Clerk

between

THE CITY OF GUNNISON, COLORADO

and

GREELEY GAS COMPANY

a Division of

ATMOS ENERGY CORP.  
a Texas and Virginia corporation

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## **ARTICLE 1:DEFINITIONS**

Section 1.1. For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined in this Article shall be given their common and ordinary meanings.

Section 1.2. “City” refers to the City of Gunnison, Gunnison County, Colorado, a Colorado home rule municipality, and includes the territory as it currently is or may in the future be included within the boundaries of the City of Gunnison.

Section 1.3. “Company” refers to Greeley Gas Company, a Division of Atmos Energy Corporation, a Texas and Virginia corporation, and its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

Section 1.4. “Distribution Facilities” refers to and is only that portion of the Company's gas distribution system within the City which delivers gas from the City gate stations (City border) to the point-of-delivery of the customer, including all devices connected to that system.

Section 1.5. “Emergency” refers to ruptures and leakage of pipelines, explosions, fires and similar instances where immediate action is necessary to prevent loss of life or significant damage to underground facilities and advance notice of proposed excavation is impracticable under the circumstances.

Section 1.6. “Facilities” refers to and are all facilities reasonably necessary to provide gas service into, within, and through the City and include but are not limited to plants, works, systems, regulator stations, transmission and distribution structures, equipment, rectifiers, valves, above and underground lines, meters and wires.

Section 1.7. “Gas” refers to natural gas, a mixture of predominantly methane, with other hydrocarbons in lesser proportions or other fuel gas mixtures that may include hydrogen that provide fuel for lighting, heating, cooling, motive power, cogeneration, fuel cell, vehicle fuel, and other processes.

Section 1.8. “Public Easements” refers to and are public and dedicated easements created and available for use by a natural gas public utility for their facilities.

Section 1.9. “Public Places” refers to, but are not necessarily limited to, parks, parkland, greenbelts, open spaces, medians, boulevards, and other public access areas within the City.

Section 1.10. “Public Utilities Commission” or “PUC” refers to and is the Public Utilities Commission of the State of Colorado or other authority succeeding to the regulatory powers of the Public Utilities Commission.

Section 1.11. “Residents” refers to and includes all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.

Section 1.12. “Revenues” refers to and are those amounts of money which the Company receives from its customers within the City from the sale of gas or Tariff Services provided under rates authorized by the Public Utilities Commission and from the use by others of its facilities within the City and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments.

Section 1. 13. "Streets" refers to and are streets, alleys, viaducts, bridges, roads and lanes within the City.

Section 1.14. "Tariff Service" is a service provided by the Company pursuant to its tariffs which are filed with and approved by the PUC, for which the Company may charge a fee. Such fees include, but are not limited to fees for connecting and disconnecting customers, for transferring service and for returned check charges.

Section 1.15. "Transportation" refers to the movement of gas, owned by others, into the Company's distribution system for redelivery to the end user's facility within the City. This includes the movement of gas that has been, or may be, accumulated by an aggregator or broker for the purpose of providing the end user, within the City, with fuel for uses normally associated with gas.

## **ARTICLE 2:GRANT OF FRANCHISE**

Section 2. 1. Grant of Franchise. The City hereby grants to Company, for the period specified and subject to the conditions, terms, and provisions contained in this franchise, a nonexclusive right to furnish, sell, and distribute gas to the City and to all residents of the City. Subject to the conditions, terms, and provisions contained in this franchise, the City also hereby grants to the Company, a non-exclusive right to acquire, construct, install, locate, maintain, operate, and extend into, within and through the City all Facilities reasonably necessary to furnish, sell, and distribute gas within, into, and through the City and to its residents and a nonexclusive right to make reasonable use of the streets and other public places and public easements as may be necessary to carry out the terms of this franchise. These rights shall extend to all areas of the City as it is now constituted and to additional areas as the City may increase in size by annexation or otherwise.

Section 2.2. Term of Franchise. This franchise shall take effect on October 14, 2000. The term of this franchise shall be for ten (10) years, beginning with said effective date of this franchise and expiring October 14, 2010.

## **ARTICLE 3:FRANCHISE FEE**

### **Section 3. 1. Franchise Fee.**

A. In consideration for the franchise rights granted herein which provide, among other things, for the Company's use of the streets and public easements which are valuable public properties acquired and maintained by the City at great expense to its residents and in recognition that the grant to the Company of the use of the streets and public easements is a valuable right, Company shall pay the City the sums provided in this section. Except as specified in this franchise, payment of the franchise fee shall not exempt the Company from any other lawful taxes or fees; however, the franchise fee provided for herein shall constitute the exclusive monetary payment by the Company to the City for the Company's use and occupancy of the streets and public easements except as specifically provided herein.

B. The Company shall pay, within thirty (30) days after the end of each calendar quarter, a franchise fee equal to the aggregate of the following:

1. Three percent (3%) of Company's Revenue (other than from natural gas transportation by the Company) derived from residents within the City during the preceding calendar quarter; and
2. One cent per one hundred cubic feet (\$.01/Ccf) of natural gas transported by Company within the corporate limits of the City during the preceding calendar quarter to each customer who has elected to receive only gas transportation service from Company; provided, however, that no volumes purchased by Company under the "cash out" provisions of Company's Tariff with respect to transportation

customers having a positive imbalance shall be included in the transportation volume upon which any portion of the franchise fee payable hereunder is calculated.

### Section 3.2. Payment Schedule.

A. For franchise fees owed on revenues received after the effective date hereof, payment shall be made within thirty (30) days after each calendar quarter during the term hereof. Adjustments shall be allowed for net write-offs of uncollectible amounts. All payments shall be made to the City Finance Director. The City Finance Director, or other authorized representatives, shall have reasonable access to the appropriate books of the Company at the Company's offices in Gunnison, Colorado (or at Company's nearest office if Company has no office in Gunnison) for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed, upon at least ten (10) days notice by the City and during regular business hours.

B. In the event an error by the Company results in an overpayment of the franchise fee to the City and said overpayment is in excess of \$5,000.00, credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is \$5,000.00 or less, credit shall be taken against the next payment.

Section 3.3. Change of Franchise Fee. Once during each calendar year of the franchise, the City Council, upon giving 30 days notice to the Company, may review and change the franchise fee that the City may be entitled to receive as a part of the franchise; provided, however, that the Council may only change the franchise fee amount such as to cause the City to receive a franchise fee under this franchise equivalent to the franchise fee that the Company may pay to any other city or town in any other franchise under which the Company renders gas service in Colorado.

Section 3.4. Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Company is accepted by the City in lieu of any occupancy tax, license tax, or similar tax on the privilege of doing business or in connection with the physical operation thereof, or in connection with the physical occupation of the streets and public easements, but does not exempt the Company from any other lawful taxation upon its property or any other tax not related to the franchise, and does not, except as otherwise herein provided, exempt Company from the payment of other fees assessed generally upon businesses.

Section 3.5. Contract Obligation. If the franchise fee specified in this Article is declared illegal, unconstitutional, or void for any reason by any court of proper authority, Company is contractually bound to pay the City an amount that would be, as near as practicable, equivalent to the amount which would have been paid by the Company as a franchise fee hereunder.

## **ARTICLE 4: SUPPLY, CONSTRUCTION, RATES AND PAYMENT**

Section 4. 1. Supply of Gas. The Company shall take all reasonable steps to provide an adequate supply of gas to its customers at a reasonable cost. If the supply of gas to its customers should be interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.

Section 4.2. Restoration of Service. In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

Section 4.3. Obligations Regarding Company Facilities. The Company shall install, maintain, repair, renovate, and replace its facilities with due diligence in a good and workmanlike manner, and the Company's facilities will be of sufficient quality and durability to provide adequate and efficient gas service to the City and its residents. Company facilities shall not unreasonably interfere with the City's water mains, sewer mains, electric



distribution lines and facilities or other municipal use of streets and other public places. The Company shall construct and maintain its facilities in such a way so as to minimize the interference with trees, historical, and other natural features. Company facilities, where reasonably practicable, shall be installed in public easements so as to cause a minimal amount of interference with such public and private property, but nothing herein shall be construed as preventing Company from obtaining private easements or rights-of-way, whether through purchase or the powers of eminent domain, where and when Company deems necessary. The Company will comply with all landscape and aesthetic requirements of the City insofar as these requirements do not interfere with the safe operation and regulatory compliance of gas equipment, fixtures, or facilities.

Section 4.4. Excavation and Construction. All excavation and construction work done by the Company shall be done pursuant to permits issued by the City and in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. Company shall not be obligated for payment of any fee to the City to obtain any permit unless a reasonable, uniform fee for an excavation permit is charged to all non-municipal utilities within the City. All public and private property legally placed in public easements disturbed by Company excavation or construction activities shall be restored by the Company at its expense to substantially its former condition or, upon the City's request, to such improved condition as will result in said property meeting current code conditions imposed upon said property by the City; provided, however, that the Company shall not be put to any additional expense as a result of returning said property to an improved condition rather than to substantially its former condition. All work shall be completed in a workman-like manner. Any subsidence or degradation of the pavement which occurs as a result of Company excavation will be corrected in a timely and expeditious manner.

Section 4.5. Relocation of Company Facilities.

A. Any relocation of the Company's facilities in any street or other public place required, caused or occasioned by any City project shall be at the cost of the Company. Relocation shall be completed within a reasonable time as mutually agreed to by the parties; provided, however, the Company shall be granted an extension of time of completion equivalent to any delay caused by conditions not under its control, provided that the Company proceeds with due diligence at all times.

B. Relocated underground facilities shall be underground. Relocated above-ground facilities shall be above-ground unless the City agrees to pay the additional cost of moving them underground. Notwithstanding the previous sentence, the Company expressly reserves, and the City expressly recognizes, the Company's right to make the final decision in the relocation of its facilities when, in the reasonable discretion of the Company, such decision is necessary either technically, or for safety and benefit of the City and its residents.

Section 4.6. Service to New Areas. If the boundaries of the City are expanded during the term of this franchise, the Company shall extend service to residents in the expanded area at the earliest practicable time and in accordance with the Company's extension policy. Service to the expanded area shall be in accordance with the terms of this franchise agreement, including payment of franchise fees.

Section 4.7. City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend its facilities to provide gas service to the City for municipal uses within the City limits without requiring the City to advance funds prior to construction.

Section 4.8. Technological Improvements. The Company shall generally introduce and install, as soon as practicable, gas energy technological advances in its equipment and service within the City when such advances, in the Company's reasonable discretion, are technically and economically feasible and are safe and beneficial to the City and its residents. Upon request by the City, which request shall not be made more frequently than once every twelve months, the Company shall review and promptly report advances which

have occurred in the gas utility industry that have been incorporated into the Company's operations in the City in the previous year or will be so incorporated in the six (6) months following the City's request. The Company shall report in advance to the City any plans to include technological advances relating to gas facilities already in place.

Section 4.9. Rates. The Company shall furnish natural gas within the corporate limits of the City, as such limits now exist, or may, during the term of this franchise, be extended to the residents thereof, and to any person or persons or corporation doing business in the City, or any addition thereto, at the rates and under the terms and conditions set forth in the tariffs, filed with or fixed by the PUC, or by any other competent authority having jurisdiction in the premises.

Section 4.10. No Discrimination. The Company shall not unlawfully discriminate against any consumer within the City with respect to charges for natural gas or services rendered.

Section 4.11. Company Rules and Regulations. The Company, from time to time, may promulgate such rules, regulations, terms, and conditions governing the conduct of its business, including the utilization of natural gas and payment therefor, and the interference with, or alteration of, any of the Company's property upon the premises of its customers, as shall be necessary to ensure a continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefor, provided that the Company shall keep on file in its office at Denver, Colorado, available to the public, copies of its tariffs concurrently in effect and on file from time to time with the PUC, and other competent authority having jurisdiction in the premises.

## **ARTICLE 5: COMPLIANCE**

Section 5. 1. City Regulation. The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provisions, ordinances, and rules and regulations as may by the City be deemed necessary in the exercise of its police power for the protection of the health, safety, and welfare of its citizens.

Section 5.2. Compliance With City Requirements. Except in instances of Emergency, the Company will comply with all City requirements and obtain any permits required regarding curb and pavement cuts, excavating, digging, and related construction activities. Except in instances of Emergency, the City may require that all installations be coordinated with the City's capital improvement programs.

Section 5.3. City Review of Construction and Design. Except in instances of Emergency, prior to construction of any significant facilities above ground, for gas control buildings, regulator stations or similar structures within the City, unless otherwise requested in writing by the City, the Company shall furnish to the City the plans for such facilities. In addition, upon request, the Company shall assess and report on the impact of such proposed construction on the City environment. Such plans and reports may be reviewed by the City to ascertain inter alia that the Company is in compliance with the following requirements: (1) that all applicable laws, including building and zoning codes and air and water pollution regulations, are complied with; (2) that aesthetic and good planning principles have been given due consideration; and (3) that adverse impact on the environment has been minimized. The Company shall incorporate all reasonable changes requested by the City. The City shall not require the Company to meet any standard higher than those required to meet Federal, State or local laws.

Section 5.4. Compliance with PUC Regulations. The gas which the Company distributes shall conform with the minimum standards promulgated by the PUC in the Rules Regulating the Service of Gas Utilities and with the tariff provisions of the Company setting standards, as the same may be amended from time to time.

Section 5.5. Compliance with Federal, State and Local Laws. The Company shall comply with all applicable Federal, State and local laws. The Company shall use its commercially reasonable best efforts to take measures which will result in its facilities meeting the standards required by applicable Federal and State air and water pollution laws. Upon the City' 's request, Company will provide the City with a status report of such measures.

Section 5.6. Inspection. The City shall have the right to inspect at all reasonable times any portion of the Company's system used to serve the City and its residents. The Company agrees to cooperate with the City in conducting the inspection and to correct any reasonable discrepancies affecting the City's interest in a prompt and efficient manner.

Section 5.7. Weed Control. The Company agrees to equitably participate with other local utilities in local efforts to control the proliferation of noxious weeds.

## **ARTICLE 6:PUBLIC UTILITIES COMMISSION**

Section 6. 1. Public Utilities Commission Regulation. The lawful provisions of the Company's tariffs on file and in effect with the Public Utilities Commission which are consistent with the restrictions and limitations of Article XXV of the Colorado Constitution regarding the rights of municipalities to franchise are controlling over any inconsistent provision in this franchise dealing with the same subject matter. To the best of the Company's knowledge, no provision of this franchise is inconsistent with any of the currently effective provisions of the Company's tariffs.

## **ARTICLE 7:REPORTS TO CITY**

Section 7. 1. Reports on Company Operations. Upon reasonable notice, the Company shall submit reasonable and necessary reports containing or based on information readily obtainable from the Company's books and records as the City may request with respect to the operations of the Company within the City limits under this franchise. The City will ensure the confidentiality of information which, in the Company's reasonable discretion, it deems to be confidential and proprietary, to the extent provided by law. Company understands that the City is subject to the Colorado public records statute.

Section 7.2. Copies of Tariffs, All PUC Filings. The Company shall keep on file in its Denver, Colorado office, all tariffs, rules, regulations and policies approved by the PUC relating to service by the Company to the City and its residents. Upon request by the City, the Company shall provide the City with copies of all filings affecting said service which it makes with the Colorado PUC. Should Company's gas cost adjustment rates for service within the City increase by ten percent (10%) or more, Company shall (i) provide direct mail notification to the City, as well as to any schools, senior citizen centers or large industrial customers within the City who are served by Company, and (ii) provide additional notification in the form of least one conspicuous local newspaper ad and residential customer bill inserts notifying of such change.

Section 7.3. Notice of Emergency or Force Majeure Events. In recognition that the City is responsible for public safety functions and emergency response the Company commits to notify the City telephonically with a follow up by telefax of any emergency or force majeure event existing within or affecting its distribution facilities. The parties will endeavor to coordinate an appropriate, and reasonable response to any such emergency or force majeure event. In addition, the Company agrees to notify the City of any extra-ordinary event on the Company's system that would require a response by the City in pursuit of its public safety and emergency response functions, such extra-ordinary event to include, but not be limited to, a reasonable determination by the Company as to the existence of an improper level of odorant in the Company's gas supplies serving the City.

## **ARTICLE 8: INDEMNIFICATION OF THE CITY**

Section 8.1 City Held Harmless. The Company shall indemnify, defend and save the City harmless from and against all liability or damage and all claims and demands whatsoever in nature arising out of the operations of the Company within the City pursuant to this franchise and the securing of and the exercise by the Company of the franchise rights granted in this ordinance and shall pay all reasonable expenses arising therefrom. The City and the Company will each provide prompt written notice to the other of the pendency of any claim or action against either party arising out of the exercise by the Company of its franchise rights. The Company and the City will each be permitted, at their own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien is judicially determined to have arisen out of or in connection with any negligent act or failure to act of the City or the City's officers, agents, employees or representatives.

Section 8.2. Payment of Expenses Incurred by City in Relation to Ordinance. At the City's option, the Company shall pay in advance or reimburse the City for actual expenses incurred in publication of notices and ordinances, and for photocopying of documents arising out of the negotiations or process for obtaining the franchise.

Section 8.3. Financial Responsibility. At the time of the execution of this ordinance, and from time to time at the City's request, not more frequently than annually, the Company shall submit to the City Attorney as a confidential document proof of its ability to meet its obligations under this ordinance, including its ability to indemnify the City as required by this article. This proof may take the form of proof of insurance coverage, adequate funding of self-insurance, or the provision of a bond. The Company shall supply the City with a list of its insurance companies with the types of coverage, but not levels of insurance. Said list shall be kept current by annual revisions during the term of the franchise and given to the City when requested. The City may require, from time to time, and the Company agrees to provide, additional reasonable proof of funding of the Company's indemnification obligations as a self-insured, if Company is acting as self-insurer. Company shall cause its insurer to be required to notify City of any lapse or change in insurance coverage and Company shall produce to City evidence that it has completed this obligation.

## **ARTICLE 9: TRANSFER OF FRANCHISE**

Section 9.1. Consent of City Required. The Company shall not transfer or assign any rights under this franchise to a third party unless the City shall approve such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld by the City. A corporate merger, consolidation or reorganization involving Company shall not constitute a transfer or assignment for purposes hereof.

## **ARTICLE 10: PURCHASE OR CONDEMNATION**

Section 10.1. City's Right to Purchase or Condemn. Any right of the City to construct, purchase or condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved and may be exercised at any time during the term of this franchise as provided by the Colorado Constitution and statutes.

Section 10.2. Continued Cooperation by Company. In the event the City exercises any right it may have under applicable law to purchase or condemn, the Company agrees that, at the City's request, it will continue to supply any service it supplies under this franchise, for the duration of the term of this franchise pursuant to terms and conditions negotiated for such continued operation.

## **ARTICLE 11: REMOVAL OF COMPANY FACILITIES AT END OF FRANCHISE**

Section 11.1. Limitations on Company Removal. In the event this franchise is not renewed at the expiration of its term or the Company terminates any service provided herein for any reason whatsoever, and the City has not purchased or condemned the system and has not provided for alternative gas service, the Company shall not be required nor shall it have the right to remove said system pending resolution of the disposition of the system. The Company further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount than it would have been entitled to were such services provided during the term of this franchise. However, in the event the obligation to maintain the facilities continues beyond the expiration of the franchise agreement, the Company and City shall negotiate the terms and conditions for such continued operation. Only upon receipt of written notice from the City stating that the City has adequate alternative gas sources to provide for the people of the City shall the Company be entitled to remove any or all of said systems in use under the terms of this franchise.

## **ARTICLE 12: FORFEITURE AND CURE**

Section 12.1. Forfeiture. Both the Company and the City recognize there may be circumstances whereby compliance with the provisions of this franchise is impossible or is delayed because of circumstances beyond the Company's control. In this instance, the Company shall use its best efforts to comply in a timely manner and to the extent possible. In the event of a substantial breach by Company of any material provision of this ordinance, the City, acting by and through its City Council, may terminate the franchise and rights granted to Company hereunder; provided, however, that such termination shall not be effective unless and until the procedures described below have been followed:

- (a) The City must deliver to Company, by certified or registered mail or hand-delivery, a written notice. Such notice must (i) fairly and fully set forth in detail each of the alleged acts or omissions of Company that the City contends constitutes a substantial breach of any material provision hereof; (ii) designate which of the terms and conditions hereof the City contends Company breached; and (iii) specify the date, time and place at which a public hearing will be held by the governing body of the City for the purpose of determining whether the allegations contained in the notice did, in fact, occur; provided, however, that the date of such hearing may not be less than fifteen (15) days after the date of such notice.
- (b) Within ten (10) days following the adjournment of the public hearing described in subsection (a) above, the City must deliver to Company, by certified or registered mail, a written notice setting forth (i) the acts and omissions of Company described in the first notice that the governing body of the City determines to have in fact occurred; and (ii) the specific terms and conditions of this ordinance listed in the first notice that the governing body of the City determines to have in fact been breached by such acts or omissions of Company.
- (c) The City shall permit Company the opportunity to substantially correct and cure all the breaches hereof set forth in the written notice described in subsection (b) above, provided such breaches are amenable to cure, within thirty (30) days after Company's receipt of such notice before termination occurs.

Section 12.2. Judicial Review. Any such declaration of forfeiture shall be subject to judicial review as provided by law.

Section 12.3. Other Legal Remedies. Nothing herein contained shall limit or restrict any legal rights that the City or the Company may possess arising from any alleged violation of this franchise.

Section 12.4. Continued Obligations. Upon forfeiture, the Company shall continue to provide service to the City and its residents in accordance with the terms hereof until the City makes alternative arrangements for such service. If the Company fails to provide continued service, it shall be liable for damages to the City.

Section 12.5. Force Majeure. Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Company is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Company is so prevented shall not be counted against Company for any reason. The term “force majeure,” as used herein, shall mean any cause not reasonably within Company control and includes, but is not limited to, acts of God, strikes, lockouts, wars, riots, orders, or decrees of any lawfully constituted Federal, State or local body, contagious or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe, inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits, temporary failure of gas supply, or necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this ordinance.

### **ARTICLE 13: AMENDMENTS**

Section 13.1. Amendments to Franchise. At any time during the term of this franchise, the City or the Company may propose amendments to this franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired and both parties thereafter, through their designated representatives, will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendment(s), unless otherwise provided by this franchise or law.

### **ARTICLE 14: MISCELLANEOUS**

Section 14.1. Successors and Assigns. The rights, privileges, and obligations granted and contained in this ordinance shall inure to the benefit of and be binding upon Greeley Gas Company, its successors and assigns, as provided for in section 9.1 above.

Section 14.2. Third Parties. Nothing contained, in this franchise shall be construed to provide rights to third parties.

Section 14.3. Representatives. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this ordinance. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the City Manager and to the Greeley Gas Company Vice President of Operations. Currently the addresses are as follows:

For the City of Gunnison: P.O. Box 239  
1100 West Virginia Ave.  
Gunnison, CO 81230

For the Company: 1301 Pennsylvania #800  
Denver, CO 80203

Section 14.4. Severability. Should any one or more provisions of this franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith

negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder.

Section 14.5. Entire Agreement. This franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this franchise.

PASSED AND ADOPTED, SIGNED AND APPROVED this  
10th day of October, 2000.

ATTEST:

THE CITY OF GUNNISON, COLORADO

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
By: Mayor

APPROVED, AS TO LEGAL FORM:

\_\_\_\_\_  
By: City Attorney\_\_\_\_\_

GREELEY GAS COMPANY, a Division of  
ATMOS ENERGY CORPORATION, a Texas  
and Virginia corporation

\_\_\_\_\_  
By: John Paris, Vice President  
Western Region